

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON - Chairwoman
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O'CONNOR

| | |
|--|--|
| In the matter of: |) DOCKET NO. S-20942A-21-0408 |
| James S. Miller (CRD# 4875515), |) |
| Biltmore Wealth Advisors, LLC (CRD# |) NOTICE OF OPPORTUNITY FOR HEARING |
| 165557), an Arizona limited liability company, |) REGARDING PROPOSED ORDER OF |
| Respondents. |) SUSPENSION OR REVOCATION |

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondents James S. Miller and Biltmore Wealth Advisors, LLC have engaged in acts, practices, and transactions that constitute violations of the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act").

I.**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the IM Act.

II.**RESPONDENTS**

2. James S. Miller ("Miller") has been a resident of the state of Arizona since at least February 1999.

3. Since October 1, 2012, Miller has been licensed with the Commission as an investment adviser representative in association with Respondent Biltmore Wealth Advisors, LLC ("BWA").

5. Miller and BWA may be referred to collectively as “Respondents.”

4

5

6

7

8
9
10

11
12
13

14
15
16

17
18

19
20
21

22
23
24

1 13. In response to U4 question 14(D)(1)(d), which asked whether any state regulatory
2 agency had ever entered an order against Miller in connection with an investment-related activity,
3 Miller answered "No."

4 14. In response to U4 question 14(D)(2)(b), which asked whether Miller has been subject
5 to any final order of a state securities commission that constitutes a final order based on violations of
6 any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct, Miller answered
7 "No."

8 15. On November 25, 2015, Respondents entered into an Order to Cease and Desist,
9 Order for Administrative Penalties, and Consent to Same ("Consent Order") with the Commission.

10 16. Pursuant to the Consent Order, Respondents admitted to violating A.R.S. § 44-
11 3241(A), the IM Act's antifraud statute, by making untrue statements misleading omissions of
12 material facts, (ii) misrepresenting professional qualifications with the intent that the
13 misrepresentation be relied on, and (iii) engaging in transactions, practices, or courses of business
14 that operate or would operate as a fraud or deceit as defined by R14-6-208(A)(1) & (3).

15 17. Specifically, Respondents admitted to:

- 16 a) Inaccurately listing dates of employment and omitting employers from
17 Miller's work history;
 - 18 b) Claiming to be an adjunct professor at universities having no formal
19 affiliation with Miller;
 - 20 c) Claiming that Miller's 2012 bankruptcy was a business decision and solely
21 to discharge a "frivolous" lawsuit when substantial personal debt was also
22 discharged in the bankruptcy;
 - 23 d) Representing that Respondents used a formula for maximizing gains without
24 disclosing the limitations and risks involved; and
 - 25 e) Including testimonials from clients on BWA's website.
- 26

18. Miller has not filed an amended U4 since the Consent Order was issued, and therefore has never amended his U4 to correct his answers to questions 14(D)(1)(a), 14(D)(1)(b), 14(D)(1)(d), or 14(D)(2)(b).

19. BWA has filed three amended Form ADVs since the Consent Order was issued. In each amended Form ADV, Miller caused BWA to falsely answer “No” to Items 11(D)(1), 11(D)(2), or 11(D)(4) of Part 1A.

IV.

REMEDIES PURSUANT TO A.R.S. § 44-3201

(Suspension/Revocation of Investment Adviser and Investment Adviser Representative License)

20. Grounds exist to suspend or revoke Miller's license with the Commission as an investment adviser representative because it is in the public interest, and:

a) Miller violated the IM Act within the meaning of A.R.S. § 44-3201(A)(3) by failing to file a supplemental statement showing material changes in the facts contained in his original application for licensure within thirty days within the meaning of A.R.S. § 44-3159(A)(1); and

b) Miller failed to file with the Commission any record, report, financial statement or other information required under the IM Act within the meaning of A.R.S. § 44-3201(A)(4) by failing to file a supplemental statement showing material changes in the facts contained in his original application for licensure within thirty days within the meaning of A.R.S. § 44-3159(A)(1).

21. Grounds exist to suspend or revoke BWA's license with the Commission as an investment adviser because it is in the public interest; and:

a) Each amended Form ADV filed by BWA since the Consent Order is inaccurate and misleading within the meaning of A.R.S. § 44-3201(A)(1);

b) BWA violated the IM Act within the meaning of A.R.S. § 44-3201(A)(3) by failing to file a supplemental statement showing material changes in the facts contained in its original application for licensure within thirty days within the meaning of A.R.S. § 44-3159(A)(1); and

1 c) BWA failed to file with the Commission a record or other information required
2 under the IM Act within the meaning of A.R.S. § 44-3201(A)(4) by failing to file a supplemental
3 statement showing material changes in the facts contained in its original application for licensure
4 within thirty days within the meaning of A.R.S. § 44-3159(A)(1).

5 V.

6 REQUESTED RELIEF

7 The Division requests that the Commission grant the following relief:

- 8 1. Order the suspension or revocation of Miller's license as an investment adviser
9 representative pursuant to A.R.S. § 44-3201;
- 10 2. Order the suspension or revocation of BWA's license as an investment adviser
11 pursuant to A.R.S. § 44-3201;
- 12 3. Order any other relief that the Commission deems appropriate.

13 VI.

14 HEARING OPPORTUNITY

15 Each Respondent may request a hearing pursuant to A.R.S. § 44-3212 and A.A.C. R14-4-306.
16 **If a Respondent requests a hearing, the requesting Respondent must also answer this Notice.** A
17 request for hearing must be in writing and received by the Commission within 10 business days after
18 service of this Notice of Opportunity for Hearing. The requesting Respondent must deliver or mail the
19 request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
20 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
21 Commission's website at <http://www.azcc.gov/hearing>.

22 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
23 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
24 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
25 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
26 Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/securities/enforcement/procedure>.

VII.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/hearing>.

Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Chris Nichols.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering Respondent or Respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering Respondent intends in good faith to deny only a part or a qualification of an allegation, the Respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

1 The officer presiding over the hearing may grant relief from the requirement to file an
2 Answer for good cause shown.

3 Dated this 29th day of December, 2021.

4
5 
6 Wendy Coy
Assistant Director of Securities
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26